

Application Serial No. 10/542,540
Response to Office Action dated September 17, 2009

PATENT
Docket: CU-4300

REMARKS

At the mailing of the Office Action, claims 1-26 are pending and are rejected. The Applicant believes that this amendment is responsive to the Office Action and overcomes the rejections.

In the Claims, please amend claim 1. The amendments to claim 1 are fully supported by the specification and include the features of dependant claims 5 and 13 in connection Figs. 1 through 3 and the specification at page 8, third paragraph, which states "The membrane supporting element 7 is connected with ...". Therefore, the amendments to claim 1 are fully supported by the specification and contain no new matter. The amendments to claim 1 can be viewed in the Amendments section in the Listing of claims beginning on page 3 of this paper.

Rejection of Claims 1-26 under 35 U.S.C. § 103(a).

The Examiner asserts an obviousness rejection of Claims 1-5, 10-11, 13-22, and 25 under 35 U.S.C. § 103(a), as being unpatentable over Suffa et al. (WO 95/26306) in view of Esposito Jr. (U.S. 3,232,499); claims 6-7 are rejected as unpatentable over Suffa in view of Esposito Jr. and further in view of Meins (U.S. 4,415,097); claims 8 and 23-24 are rejected as unpatentable over Suffa in view of Esposito Jr. and further in view of Croyle (U.S. 3,321,114); claim 9 is rejected as unpatentable over Suffa in view of Esposito Jr. and further in view of Laauwe (U.S. 4,747,518); and claims 12 and 26 are rejected as being unpatentable over Suffa in view of Esposito Jr. and further in view of Baudin et al. (U.S. 5,924,605).

The Applicant respectfully disagrees and submits that claims 1-26 are non-obvious and patentable.

The present invention is directed to a drinking mouthpiece 1 for a liquid container which is substantially elastic. On the other hand, the Suffa et al. disclosure is related to bottle closures inherently different from the claimed drinking mouthpiece 1. In fact, the

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claim 1 is clearly different from the Suffa et al. disclosure.

To illustrate this point, amended claim 1 provides that the membrane supporting element 7 is supported by a web 9 connected with a fastening ring 10 for securing the membrane supporting element 7 to the lid 2, wherein the fastening ring is spaced apart from the membrane supporting element 7 in a longitudinal direction of drinking mouthpiece 1.

The web 9 according to the invention provides a support structure which allows the drinking mouthpiece 1 to be made of an elastic material. Thereby, upon application of pressure by sucking on the mouthpiece 1, the membrane resnaps into its open position and allows the flow of liquid (cf. English specification, p. 9, para. 4 "Fig. 5 shows the membrane 4[...]").

On the other hand, Suffa et al. – and in a similar fashion JP 2002 002 755 A, found in the IDS considered by the Examiner on September 10, 2009 – merely shows a container closure which is not suitable for use in a drinking bottle or the like, as it contains no hint at providing for an elastic mouthpiece with means for supporting this elastic mouthpiece so as to ensure both a stable structure and a reliable release of liquid upon application of underpressure during drinking.

With regard to the matter of the present claim 5, the Examiner cites fastening ring 7 connected with support rods 18 taught by Suffa et al. However, the support web 9 with its fastening ring 10 according to the invention is clearly structurally distinct from fastening ring 7 connected with support rods 18 as in Suffa et al. This difference is clearly reflected in proposed claim 1 which specifies that the fastening ring 10 is spaced apart from the membrane supporting element 7 in a longitudinal direction of the drinking mouthpiece 1. On the other hand, fastening ring 7 and support rods 18 of Suffa et al. are essentially horizontally aligned. These different features of the present subject matter cannot be obvious in view of Suffa et al. either, as the closure shown therein is not intended for use

Application Serial No. 10/542,540
Response to Office Action dated September 17, 2009

PATENT
Docket: CU-4300

with a longitudinal drinking mouthpiece and hence there would be no incentive to provide the claimed device.

Moreover, Esposito, in whole or in combination with Suffa et al., fails to give any hint at the newly introduced subject-matter, as it evidently relies on a more or less rigid spout 16, in contrast to the elastic mouthpiece 1 supported by the web 9 according to the invention. None of the other references in combination with Suffa et al. cure the deficit found in the Suffa et al. reference. The Applicant submits, therefore, that amended claim 1 is not disclosed or suggested by the prior art, but rather is non-obvious and allowable. The Applicant respectfully requests, therefore, that the Examiner withdraw this ground of rejection.

It is axiomatic that if an independent claim is allowable, a claim depending therefrom is likewise allowable. The Applicant submits that since claims 2-26 depend from allowable claim 1, claims 2-26 are likewise allowable. The Applicant further notes that the additional features found in the dependant claims serve to further distinguish the claimed combination from the prior art. The Applicant respectfully requests, therefore, that the remarks over claim 1 be both reflected in the dependant claims and overcome the rejection thereof. The Applicant submits that claims 2-26 are also non-obvious and allowable, and respectfully requests that the Examiner withdraw this rejection of claims 1-26 claims.

The Applicant notes that the Examiner relies upon the combined teachings of Suffa et al. (WO 95/26306) and Esposito (US Patent No. 3,232,499) in rejecting the previously presented main claim, as well as several of the dependent claims. In particular, the Examiner submits that Esposito suggests the use of the present valve assembly for a drinking mouthpiece, as well as the resnapping of the membrane into an outwardly curved open positioned, while the remaining features are anticipated by Suffa et al.

The Applicant submits that this reading of Esposito is in error. The bottle cap 13

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Response to Office Action dated September 17, 2009

PATENT
Docket: CU-4300

according to Esposito teaches a very different mechanism for selectively releasing fluid. In the embodiment according to Figs. 4 and 5 drawn upon the examiner, rotating cap 13 having a spout 16 by a certain amount will lower cap 13 from an open position shown in Fig. 4 to a closed position shown in Fig. 5. Thus, it is not by effect of an external application of pressure – as in the claimed subject-matter- but by mechanically screwing that the cap 13 that a fluid passage is released.

However, it is essential to recognize that according to Esposito the outwardly curved position of membrane 15a,b shown in Fig. 5 corresponds to the closed position of the valve assembly, wherein toggle bosses 15c are pressed inward against interior extension 16c of spout 16 in order to block the liquid channel. This also holds true for the embodiment according to Figs. 6 and 7 of Esposito, wherein a conduit 26a is closed by the exertion of an upward pull on stem 26 (cf. col. 4, l. 42-58 and Fig. 7 showing the closed position).

In contrast to this, according to the claimed invention, the membrane resnaps from an inwardly curved closed position, upon application of pressure, to an outwardly curved open position in which the valve openings of the membrane and membrane supporting element, respectively are released (cf. Figs. 4 and 5 of the present application illustrating the closed and the open position of the claimed drinking mouthpiece, respectively).

Thus, Esposito discloses a release mechanism which works in an opposite way as the present valve assembly. Accordingly, this prior art reference rather teaches away from the present invention which therefore cannot be suggested even by the combined teachings of Suffa et al. and Esposito.

Clearly, therefore, all of the features of amended claim 1 are not taught, disclosed or suggested by the references, in whole or in combination, and the fact remains that claim 1, and dependant claims 2-26, are non-obvious and allowable.

Application Serial No. 10/542,540
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Withdrawal of this rejection is respectfully solicited.

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CONCLUSIONS

The Applicant respectfully contends that all conditions of patentability are met in the pending claims and requests that the amendments to the claims be entered into the record. The Applicant respectfully submits that this application should be in condition for allowance and respectfully requests favorable consideration.

Respectfully Submitted,

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